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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

12 MICHAEL W. ELLSWORTH,

13 Petitioner,

14 v.

15 STATE OF WASHINGTON,

16 Respondent.
17

Case No. C08-5397 FDB/KLS

ORDER TO AMEND PETITION

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19 This habeas corpus petition has been referred to United States Magistrate Judge Karen L.
20 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner seeks federal
21 habeas corpus relief pursuant to 28 U.S.C. § 2254. (Dkt. # 1).

22 The Court notes that Petitioner has failed to name the correct Respondent, thereby depriving
23 this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984).
24 28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person
25 detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate
26 custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person
27 having a day-to-day control over the prisoner. That person is the only one who can produce ‘the

body' of the petitioner." *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

Therefore, Petitioner's custodian for purposes of his habeas corpus petition challenging the execution of his Washington state sentence, is the warden of the prison where he is currently confined. *See, e.g., Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

Accordingly, it is **ORDERED**:

- (1) Petitioner shall amend his petition to name his immediate custodian and warden as Respondent **on or before August 29, 2008**. For purposes of this amendment, it is sufficient for Petitioner to amend the first page of his petition only. To assist Petitioner, the Clerk of the Court is directed to mail Petitioner a 28 U.S.C. § 2254 Petition form;
- (2) The Court is aware that Petitioner has written to the Clerk seeking additional time in this matter, stating that he is scheduled to undergo surgery in the near future. (Dkt. # 5). If Petitioner requires additional time to comply with this Court's Order, Petitioner should submit a request for more time and supply the Court with documents reflecting the date of his surgery and medical condition so that the Court may determine the extent of time and/or assistance that may be required; and
- (3) The Court Clerk is directed to send a copy of this Order to Petitioner and to note this matter for the Court's **August 29, 2008** calendar.

DATED this 25th day of July, 2008.



Karen L. Strombom
United States Magistrate Judge